

**SETTLEMENT AGREEMENT BETWEEN THE STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS
AND JAMES WESLEY SCHOOLER**
(Funeral Director License)

The State Board of Embalmers and Funeral Directors (the "Board") and James Wesley Schooler ("Licensee" or "Schooler") enter into this "Settlement Agreement Between The State Board of Embalmers and Funeral Directors and James Wesley Schooler" (the "Settlement Agreement") to resolve the question of whether Licensee's funeral director license should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on Licensee's funeral director license.

Pursuant to the terms of Section 536.060 RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that he has been advised of his right to consult with private legal counsel, at his expense, to assist him with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

Relevant Statutes and Regulations

1. Section 333.031.2, RSMo, requires a license to engage in the practice of a funeral director and states:

2. No person shall engage in the practice of funeral directing unless he has a license issued under this chapter nor shall any person use in connection with his name or business any of the words "undertaker", "mortician", "funeral home", "funeral parlor", "funeral chapel", "funeral consultant", "funeral director" or other title implying that he is in the business defined as funeral directing herein, unless he or the individual having control, supervision or management of his business is duly licensed to practice funeral directing in this state.

2. Section 333.325, RSMo, requires a registration to engage in the practice of a preneed agent and states, in relevant part:

1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter.

* * *

4. Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit the sale of preneed contracts as part of their biennial renewal form. Each funeral director preneed agent shall be included on the board's registry.

3. Section 333.330, RSMo, authorizes the Board to seek discipline against funeral director licenses and states, in relevant portion:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

* * *

(14) Violation of any professional trust or confidence;

Parties and Background

4. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

5. James Wesley Schooler is an individual who has registered his address with the Board as 26859 Q Ave., Fairfax, Missouri 64446.

6. Schooler holds funeral director license number 000421 which is current and active and was so at all times relevant to this Settlement Agreement.

7. Before July 8, 2014, Schooler had never been included on the Board's registry as a preneed agent.

8. Schooler submitted his "Application for Preneed Agent/Funeral Director" to the Board that he signed before a notary public on April 29, 2014 (the "Application").

9. In accord with Section 333.325.4, RSMo, on July 8, 2014 the Board entered Schooler on its registry as a preneed agent, but placed that registration on probation for a period of 1 year.

Basis for Probation - Unregistered practice as a preneed agent

10. After August 28, 2009, Section 333.325, RSMo, requires that all persons acting as a preneed agent seek registration from the Board to lawfully act as a preneed agent.

11. Licensed funeral directors may be included on the Board's registry and thus, lawfully act as a preneed agent, with no further qualifications other than requesting registration and reporting to the Board the name and address of each preneed seller for whom the funeral director is authorized to act as a preneed agent.

12. Until Schooler filed the Application, Schooler had not requested to be added to the Board's registry nor had he reported to the Board the name and address of each preneed seller for whom he was authorized to act as a preneed agent.

13. Between August 29, 2009 and April 29, 2014, Schooler acted as a preneed agent on behalf of Schooler Funeral Home, Inc., a properly licensed preneed seller holding seller license number 2009037683.

Cause for Discipline

14. The Board has cause to discipline Schooler's funeral director license pursuant to Section 333.330.2 (6), and (14) RSMo.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

15. Licensee's license to practice as a funeral director is hereby placed on **PROBATION** for a period of **ONE YEAR** from the effective date of this Settlement Agreement. During the Disciplinary Period, Licensee shall be entitled to practice as a funeral director, as defined in Chapters 333 and 436, RSMo, subject to the following terms and conditions:

Terms and Conditions of the Disciplinary Period

16. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;

- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts and including all revenue laws;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately.
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;

- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to pay any state taxes;
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- i. Licensee shall provide any death care employer with a copy of this Settlement Agreement within 5 working days from the date of receipt of the final executed Settlement Agreement and within 5 working days from the date of any new employment; and
- j. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice.

17. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the

Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license.

18. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

19. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning such violation(s).

20. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on Licensee's license. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

21. Licensee, together with his heirs and assigns and its attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees,

agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

22. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.


23. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license(s). If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

24. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive

Director of the Board.

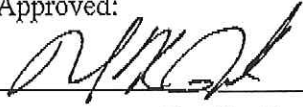
25. This Settlement Agreement shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee



James Wesley Schooler

Dated: 20 Sept 2014

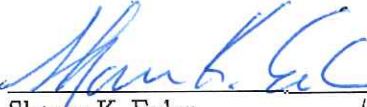
Approved:


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COUNSEL FOR LICENSEE

Board


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Dated: 9.30.2014


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EFFECTIVE DATE
10.15.2014
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS